

## CHAPTER 7.5. PENALTIES FOR UNFAIR RECYCLING COMPETITION

**14588.** It is the intent of the Legislature that handling fees paid to supermarket site recycling centers pursuant to Section 14585 shall only be used to offset the unique costs of providing convenient recycling opportunities to consumers at supermarket sites, and that those fees may not be expended for the purpose of engaging in unfair and predatory competition in order to reduce recycling rates of other recycling centers certified pursuant to this division.

**14588.1. (a)** As used in this chapter, "unfair and predatory pricing" means the payment to consumers by a supermarket site, that receives handling fees for the redemption of beverage containers, in an amount that exceeds the sum of both of the following:

**(1)** The California refund value for that container.

**(2)(A)** If the supermarket site is not located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a five-mile radius of the supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

**(B)** If the supermarket site is located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a 10-mile radius of the

supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

**(b)** In calculating the three-day average price paid by recyclers within the specified distance of a recycler alleged to have engaged in predatory pricing, as required by subdivision (a), the department shall only survey those recyclers who did not receive handling fees in three or more of the 12 whole months immediately preceding the date of the allegation of predatory pricing.

**(c)** For purposes of this chapter, "rural region" means a nonurban area identified by the department on an annual basis using Farmers Home Loan Administration criteria. Those criteria include, but are not limited to, places, open country, cities, towns, or census designated places with populations that are less than 10,000 persons. The department may designate an area with population of between 10,000 and 50,000 persons as a rural region, unless the area is identified as part of, or associated with, an urban area, as determined by the department on an individual basis.

**14588.2. (a)** To ensure that handling fees paid to a supermarket site are not used for the purpose of engaging in unfair and predatory pricing, and to otherwise further the intent of this chapter, the department shall follow all of the requirements of this section upon the complaint of either of the following:

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**(1)** Any certified recycler located within five miles of the supermarket site alleged to have engaged in unfair and predatory pricing if not located in a rural region.

**(2)** Any certified recycler located within 10 miles of the supermarket site alleged to have engaged in unfair and predatory pricing if located in a rural region.

**(b)(1)** Within 50 days of receiving the complaint, the department shall complete an audit of the payments for the redemption of beverage containers being paid by the supermarket site, and by all other certified recycling centers as specified in Section 14588.1, for the purpose of determining whether the supermarket site is engaged in unfair and predatory pricing.

**(2)** The department shall withhold from public disclosure any proprietary information collected by the department in the course of the audit mandated by this paragraph. The department shall exercise its discretion in determining what information is proprietary.

**(c)(1)** If the director determines there is probable cause that a supermarket site, against which a complaint has been made, has engaged in unfair and predatory pricing, the director shall, within 60 days of receiving the complaint, convene an informal hearing before the director, or the director's designee.

**(2)** At least 10 days before the hearing,

the director shall forward the results of the audit to the complainant and respondent.

**(3)** At the hearing, the director, or the director's designee, shall review the audit conducted pursuant to subdivision (b) and any evidence presented by the complainant that a supermarket site has engaged in unfair and predatory pricing. The director, or the director's designee, shall also review any evidence presented by the respondent that the respondent has not engaged in unfair and predatory pricing.

**(4)** The respondent shall be given the opportunity to rebut the presumption of unfair and predatory pricing imposed by Section 14588.1 by demonstrating to the satisfaction of the director, or the director's designee, that the respondent did both of the following:

**(A)** The respondent made a good faith effort to determine the average scrap value paid per pound for that container type by certified recycling centers located within a five-mile or 10-mile radius of the supermarket site, pursuant to subdivision (a) of Section 14588.1, within 30 days before the date of the alleged violation.

**(B)** The three-day average scrap value the respondent paid per pound for that container type was within 2.5 percent of the three-day average scrap value paid per pound determined by the department pursuant to subdivision (a).

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**(5)** The director, or the director's designee, may dismiss a complaint made

pursuant to subdivision (a) upon determining either of the following:

**(A)** The complaint is without basis.

**(B)** The complaint is repetitious of prior

similar complaints against the same supermarket site for which the director or the director's designee has determined that no unfair and predatory pricing occurred.

**(d)** Within 20 days of the completion of

the hearing, the director, or the director's

designee, shall determine whether the

supermarket site has engaged in unfair and predatory pricing. This determination shall be based upon the audit conducted pursuant to subdivision (b), and upon any clear and convincing evidence of unfair and predatory pricing presented at the hearing.

**(e)** During the time period from the date

of the receipt of a complaint pursuant to

subdivision (a), until the date the director makes a determination pursuant to subdivision (d), the supermarket site against which the allegation of unfair and predatory pricing is made shall not receive handling fees that were earned during the period commencing with the date of the alleged unfair and predatory pricing. However, nothing in this subdivision shall affect the payment of handling fees to a supermarket site that is found not to have engaged in unfair and predatory pricing pursuant to this

section, or to the activities of a supermarket site prior to the date of the alleged unfair and predatory pricing.

**(f)(1)** If, after complying with the procedure established pursuant to this

section, the director, or the director's designee, determines that a supermarket site has engaged in unfair and predatory pricing, the site is ineligible to receive handling fees as specified by this section.

**(A)** If the determination of unfair and predatory pricing is the first for the site, the site is ineligible to receive handling fees for six months from the date that the respondent is found to have engaged in unfair and predatory pricing.

**(B)** If the determination of unfair and predatory pricing is the second for the site, the site is ineligible to receive handling fees for one year from the date that the respondent is found to have engaged in unfair and predatory pricing.

**(C)** If the determination of unfair and predatory pricing is the third or more for the site, the site is ineligible to receive handling fees for five years after that date that the respondent is found to have engaged in unfair and predatory pricing.

**(2)** The penalties specified by this section shall be applied retroactively to all determinations of unfair and predatory pricing made by the director, or the director's designee, during the period from January 1, 2000, to January 1, 2002, inclusive.

**(g)** The complainant or respondent may

obtain a review of the determination made pursuant to this section by

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filing in the superior court a petition for a writ of mandate within 30 days following the issuance of the determination.

Section

1094.5 of the Code of Civil

Procedure shall govern judicial proceedings pursuant to this subdivision, except that the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set forth in this subdivision, the determination made pursuant to this subdivision is not subject to review by any court or agency.

**(h)** If either party appeals the determination of the director, or the director's designee, pursuant to subdivision (g), and the department prevails, the department may recover any costs associated with its defense of the complaint.